

**ASSEMBLY BILL**

**No. 1765**

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**Introduced by Assembly Member Blakeslee**

January 8, 2008

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An act to amend Section 15630 of the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1765, as introduced, Blakeslee. Elder abuse: mandated reporters.

Existing law provides for the reporting of actual or suspected physical or other abuse, as defined, of an elder or dependent adult by specified persons and entities and imposes various requirements on state and local agencies in processing, investigating, and reporting on these reports. Violation of those provisions is a misdemeanor.

Existing law provides that if the abuse has occurred in a long-term care facility, the mandated reporter shall report the abuse to the local ombudsman or the local law enforcement agency.

This bill would instead require the mandated reporter to report the abuse to both the local ombudsman and the local law enforcement agency.

Existing law provides that if the abuse has occurred in any place other than a long-term care facility, the mandated reporter shall report the abuse to the adult protective services agency or the local law enforcement agency.

This bill would instead require the mandated reporter to report the abuse to both the adult protective services agency and the local law enforcement agency.

By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 15630 of the Welfare and Institutions  
2 Code is amended to read:

3 15630. (a) Any person who has assumed full or intermittent  
4 responsibility for the care or custody of an elder or dependent  
5 adult, whether or not he or she receives compensation, including  
6 administrators, supervisors, and any licensed staff of a public or  
7 private facility that provides care or services for elder or dependent  
8 adults, or any elder or dependent adult care custodian, health  
9 practitioner, clergy member, or employee of a county adult  
10 protective services agency or a local law enforcement agency, is  
11 a mandated reporter.

12 (b) (1) Any mandated reporter who, in his or her professional  
13 capacity, or within the scope of his or her employment, has  
14 observed or has knowledge of an incident that reasonably appears  
15 to be physical abuse, as defined in Section 15610.63 of the Welfare  
16 and Institutions Code, abandonment, abduction, isolation, financial  
17 abuse, or neglect, or is told by an elder or dependent adult that he  
18 or she has experienced behavior, including an act or omission,  
19 constituting physical abuse, as defined in Section 15610.63 of the  
20 Welfare and Institutions Code, abandonment, abduction, isolation,  
21 financial abuse, or neglect, or reasonably suspects that abuse, shall  
22 report the known or suspected instance of abuse by telephone  
23 immediately or as soon as practicably possible, and by written  
24 report sent within two working days, as follows:

25 (A) If the abuse has occurred in a long-term care facility, except  
26 a state mental health hospital or a state developmental center, the  
27 report shall be made to the local ombudsperson ~~or~~ and the local  
28 law enforcement agency.

1 Except in an emergency, the local ombudsperson and the local  
2 law enforcement agency shall, as soon as practicable, do all of the  
3 following:

4 (i) Report to the State Department of Health Services any case  
5 of known or suspected abuse occurring in a long-term health care  
6 facility, as defined in subdivision (a) of Section 1418 of the Health  
7 and Safety Code.

8 (ii) Report to the State Department of Social Services any case  
9 of known or suspected abuse occurring in a residential care facility  
10 for the elderly, as defined in Section 1569.2 of the Health and  
11 Safety Code, or in an adult day care facility, as defined in paragraph  
12 (2) of subdivision (a) of Section 1502.

13 (iii) Report to the State Department of Health Services and the  
14 California Department of Aging any case of known or suspected  
15 abuse occurring in an adult day health care center, as defined in  
16 subdivision (b) of Section 1570.7 of the Health and Safety Code.

17 (iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse  
18 any case of known or suspected criminal activity.

19 (B) If the suspected or alleged abuse occurred in a state mental  
20 hospital or a state developmental center, the report shall be made  
21 to designated investigators of the State Department of Mental  
22 Health or the State Department of Developmental Services, or to  
23 the local law enforcement agency.

24 Except in an emergency, the local law enforcement agency shall,  
25 as soon as practicable, report any case of known or suspected  
26 criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

27 (C) If the abuse has occurred any place other than one described  
28 in subparagraph (A), the report shall be made to the adult protective  
29 services agency ~~or~~ and the local law enforcement agency.

30 (2) (A) A mandated reporter who is a clergy member who  
31 acquires knowledge or reasonable suspicion of elder or dependent  
32 adult abuse during a penitential communication is not subject to  
33 paragraph (1). For purposes of this subdivision, "penitential  
34 communication" means a communication that is intended to be in  
35 confidence, including, but not limited to, a sacramental confession  
36 made to a clergy member who, in the course of the discipline or  
37 practice of his or her church, denomination, or organization is  
38 authorized or accustomed to hear those communications and under  
39 the discipline tenets, customs, or practices of his or her church,

1 denomination, or organization, has a duty to keep those  
2 communications secret.

3 (B) Nothing in this subdivision shall be construed to modify or  
4 limit a clergy member's duty to report known or suspected elder  
5 and dependent adult abuse when he or she is acting in the capacity  
6 of a care custodian, health practitioner, or employee of an adult  
7 protective services agency.

8 (C) Notwithstanding any other provision in this section, a clergy  
9 member who is not regularly employed on either a full-time or  
10 part-time basis in a long-term care facility or does not have care  
11 or custody of an elder or dependent adult shall not be responsible  
12 for reporting abuse or neglect that is not reasonably observable or  
13 discernible to a reasonably prudent person having no specialized  
14 training or experience in elder or dependent care.

15 (3) (A) A mandated reporter who is a physician and surgeon,  
16 a registered nurse, or a psychotherapist, as defined in Section 1010  
17 of the Evidence Code, shall not be required to report, pursuant to  
18 paragraph (1), an incident where all of the following conditions  
19 exist:

20 (i) The mandated reporter has been told by an elder or dependent  
21 adult that he or she has experienced behavior constituting physical  
22 abuse, as defined in Section 15610.63 of the Welfare and  
23 Institutions Code, abandonment, abduction, isolation, financial  
24 abuse, or neglect.

25 (ii) The mandated reporter is not aware of any independent  
26 evidence that corroborates the statement that the abuse has  
27 occurred.

28 (iii) The elder or dependent adult has been diagnosed with a  
29 mental illness or dementia, or is the subject of a court-ordered  
30 conservatorship because of a mental illness or dementia.

31 (iv) In the exercise of clinical judgment, the physician and  
32 surgeon, the registered nurse, or the psychotherapist, as defined  
33 in Section 1010 of the Evidence Code, reasonably believes that  
34 the abuse did not occur.

35 (B) This paragraph shall not be construed to impose upon  
36 mandated reporters a duty to investigate a known or suspected  
37 incident of abuse and shall not be construed to lessen or restrict  
38 any existing duty of mandated reporters.

39 (4) (A) In a long-term care facility, a mandated reporter shall  
40 not be required to report as a suspected incident of abuse, as defined

1 in Section 15610.07, an incident where all of the following  
2 conditions exist:

3 (i) The mandated reporter is aware that there is a proper plan  
4 of care.

5 (ii) The mandated reporter is aware that the plan of care was  
6 properly provided or executed.

7 (iii) A physical, mental, or medical injury occurred as a result  
8 of care provided pursuant to clause (i) or (ii).

9 (iv) The mandated reporter reasonably believes that the injury  
10 was not the result of abuse.

11 (B) This paragraph shall not be construed to require a mandated  
12 reporter to seek, nor to preclude a mandated reporter from seeking,  
13 information regarding a known or suspected incident of abuse prior  
14 to reporting. This paragraph shall apply only to those categories  
15 of mandated reporters that the State Department of Health Services  
16 determines, upon approval by the Bureau of Medi-Cal Fraud and  
17 Elder Abuse and the state long-term care ombudsperson, have  
18 access to plans of care and have the training and experience  
19 necessary to determine whether the conditions specified in this  
20 section have been met.

21 (c) (1) Any mandated reporter who has knowledge, or  
22 reasonably suspects, that types of elder or dependent adult abuse  
23 for which reports are not mandated have been inflicted upon an  
24 elder or dependent adult, or that his or her emotional well-being  
25 is endangered in any other way, may report the known or suspected  
26 instance of abuse.

27 (2) If the suspected or alleged abuse occurred in a long-term  
28 care facility other than a state mental health hospital or a state  
29 developmental center, the report may be made to the long-term  
30 care ombudsperson program. Except in an emergency, the local  
31 ombudsperson shall report any case of known or suspected abuse  
32 to the State Department of Health Services and any case of known  
33 or suspected criminal activity to the Bureau of Medi-Cal Fraud  
34 and Elder Abuse, as soon as is practicable.

35 (3) If the suspected or alleged abuse occurred in a state mental  
36 health hospital or a state developmental center, the report may be  
37 made to the designated investigator of the State Department of  
38 Mental Health or the State Department of Developmental Services  
39 or to a local law enforcement agency or to the local ombudsperson.  
40 Except in an emergency, the local ombudsperson and the local law

1 enforcement agency shall report any case of known or suspected  
2 criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse,  
3 as soon as is practicable.

4 (4) If the suspected or alleged abuse occurred in a place other  
5 than a place described in paragraph (2) or (3), the report may be  
6 made to the county adult protective services agency.

7 (5) If the conduct involves criminal activity not covered in  
8 subdivision (b), it may be immediately reported to the appropriate  
9 law enforcement agency.

10 (d) When two or more mandated reporters are present and jointly  
11 have knowledge or reasonably suspect that types of abuse of an  
12 elder or a dependent adult for which a report is or is not mandated  
13 have occurred, and when there is agreement among them, the  
14 telephone report may be made by a member of the team selected  
15 by mutual agreement, and a single report may be made and signed  
16 by the selected member of the reporting team. Any member who  
17 has knowledge that the member designated to report has failed to  
18 do so shall thereafter make the report.

19 (e) A telephone report of a known or suspected instance of elder  
20 or dependent adult abuse shall include, if known, the name of the  
21 person making the report, the name and age of the elder or  
22 dependent adult, the present location of the elder or dependent  
23 adult, the names and addresses of family members or any other  
24 adult responsible for the elder's or dependent adult's care, the  
25 nature and extent of the elder's or dependent adult's condition, the  
26 date of the incident, and any other information, including  
27 information that led that person to suspect elder or dependent adult  
28 abuse, as requested by the agency receiving the report.

29 (f) The reporting duties under this section are individual, and  
30 no supervisor or administrator shall impede or inhibit the reporting  
31 duties, and no person making the report shall be subject to any  
32 sanction for making the report. However, internal procedures to  
33 facilitate reporting, ensure confidentiality, and apprise supervisors  
34 and administrators of reports may be established, provided they  
35 are not inconsistent with this chapter.

36 (g) (1) Whenever this section requires a county adult protective  
37 services agency to report to a law enforcement agency, the law  
38 enforcement agency shall, immediately upon request, provide a  
39 copy of its investigative report concerning the reported matter to  
40 that county adult protective services agency.

1 (2) Whenever this section requires a law enforcement agency  
2 to report to a county adult protective services agency, the county  
3 adult protective services agency shall, immediately upon request,  
4 provide to that law enforcement agency a copy of its investigative  
5 report concerning the reported matter.

6 (3) The requirement to disclose investigative reports pursuant  
7 to this subdivision shall not include the disclosure of social services  
8 records or case files that are confidential, nor shall this subdivision  
9 be construed to allow disclosure of any reports or records if the  
10 disclosure would be prohibited by any other provision of state or  
11 federal law.

12 (h) Failure to report, or impeding or inhibiting a report of,  
13 physical abuse, as defined in Section 15610.63 of the Welfare and  
14 Institutions Code, abandonment, abduction, isolation, financial  
15 abuse, or neglect of an elder or dependent adult, in violation of  
16 this section, is a misdemeanor, punishable by not more than six  
17 months in the county jail, by a fine of not more than one thousand  
18 dollars (\$1,000), or by both that fine and imprisonment. Any  
19 mandated reporter who willfully fails to report, or impedes or  
20 inhibits a report of, physical abuse, as defined in Section 15610.63  
21 of the Welfare and Institutions Code, abandonment, abduction,  
22 isolation, financial abuse, or neglect of an elder or dependent adult,  
23 in violation of this section, where that abuse results in death or  
24 great bodily injury, shall be punished by not more than one year  
25 in a county jail, by a fine of not more than five thousand dollars  
26 (\$5,000), or by both that fine and imprisonment. If a mandated  
27 reporter intentionally conceals his or her failure to report an  
28 incident known by the mandated reporter to be abuse or severe  
29 neglect under this section, the failure to report is a continuing  
30 offense until a law enforcement agency specified in paragraph (1)  
31 of subdivision (b) of Section 15630 of the Welfare and Institutions  
32 Code discovers the offense.

33 (i) For purposes of this section, “dependent adult” shall have  
34 the same meaning as in Section 15610.23.

35 SEC. 2. No reimbursement is required by this act pursuant to  
36 Section 6 of Article XIII B of the California Constitution because  
37 the only costs that may be incurred by a local agency or school  
38 district will be incurred because this act creates a new crime or  
39 infraction, eliminates a crime or infraction, or changes the penalty  
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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